February 15, 2021

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

RE: Community Reinvestment Act Advanced Notice of Proposed Rulemaking
Docket No. R–1723 and RIN 7100–AF94

The purpose of this correspondence is to submit comments in response to the FRB's Notice of Proposed Rulemaking (the "Proposal") regarding the Community Reinvestment Act (CRA).

CRA Today hosts the CRA Hub, a membership for bankers to master the art of the CRA and to transform communities through the power of economic and community development. CRA Today offers CRA training, strategy and consulting services in partnership with financial institutions, CDFIs and community-based organizations. As the founder with over 26 years of community development experience, with emphasis in CRA, compliance, training, community development lending and CDFI initiatives, I am pleased to provide feedback to influence the modernization efforts of the Community Reinvestments Act.

Overview of Comments regarding the Board's approach to the Community Reinvestment Act Advance Notice of Proposal Rulemaking

The CRA has proven to be an effective tool to ensure that financial institutions meet the credit needs in the communities in which they serve. While the CRA has enabled increased focus and the deployment of private capital into disadvantaged communities since its enactment in 1977, there is more work to be done. The CRA has proven to be a steadfast tool for community and economic development. The current CRA regulation has proven to be an effective framework, yet modernization of a few key elements is overdue.

The Federal Reserve Board is commended for a taking a methodical and calculated approach to CRA modernization, we appreciate the Board's efforts in conducting listening sessions and providing ample time for reflective feedback and community collaboration. Bankers and community development stakeholders across the nation look forward to reviewing and commenting on the next iteration of the proposed rules and hold hopes of interagency coordination on a future joint proposal, critical to reducing market confusion and inefficiencies in regulatory policy and oversight.

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

Small Business Definitions

It is important to note that Regulation BB maintains multiple definitions of small businesses that leads to confusion in data collection, data reporting and performance measurement. These inconsistencies add unnecessary complexity and should be toned to the definition of CRA Report[1] and/or Small Business Administration's (SBA) size standards with respect to defining a small business or small farm within the CRA.[2] Furthermore, the small business definition for purposes of Dodd Frank Act section 1071 adds further confusion regarding small business definitions. This is yet another reason an interagency approach to CRA is imperative and would reduce confusion around overlapping and inconsistent definition of small business loans under different regulations.

The Interagency Questions and Answers Regarding Community Reinvestment (guidance, 81 Fed. Reg. at 48,533 (citing § __ 12(v)) also defines small business in the context of community development activities include "activities that promote economic development by financing businesses or farms that meet the certain eligibility standards established by the Small Business Administration, (13 C.F.R. § 121.301) *or* that have *gross annual revenues* of $1 million or less." Many financial institutions chose to use the SBA size thresholds as they more specifically match to the true definition of a small business per specific industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget. The size standards are for the most par expressed in either millions of dollars (those preceded by "$") or number of employees (those without the "$"). A size standard is the largest that an entity can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm.

The next iteration of the proposed rule should clearly delineate the small business definitions for each section of Regulation BB as it references small business to reduce the complexity and confusion around CRA data collection, maintenance and reporting through final benchmarks and tests.

Key Definitions

Not mentioned explicitly in the ANPR, but important to note, the Board should revisit its definition of "renewals" under the CRA. Renewals of lines of credit (without a new Note) should be included in a financial institution's record of meeting the credit needs of small businesses.

[1] Schedule RC-C, Part II. Loans to Small Businesses and Small Farms, collected pursuant to Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991.
[2] Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9). Subpart A—Size Eligibility Provisions and Standards, Provisions of General Applicability, §121.101 SBA size standards

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

While the proposed metrics attempt to increase clarity, consistency and transparency, performance context (through written narrative and statistics), should be allowed to account for local market and bank strategy differences.

Question 35. What standard should be used to determine the evaluation of consumer loans: (1) A substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

The inclusion of consumer loan performance is often misunderstood and misinterpreted under the CRA. A substantial majority standard should be based on the number of loans and dollar amount of loans as a combination with benchmarks higher than 50% of total product line lending.

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (e.g., motor vehicle loans, credit cards) merit a separate evaluation for each?

Consumer loans should be evaluated as a single aggregate product line if consumer lending is deemed to be a majority of a bank's lending performance.

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

A small business loan is defined as a loan included in "loans to small businesses" as defined in the instructions for preparation of the Call Report. The Call Report defines such loans as loans with an original amount of $1 million or less. [3]

Deviating from the standard Call Report reporting process would increase the complexity and confusion around CRA data collection, maintenance and reporting, without a commensurate increase in community reinvestment impact.

The definition of small business loans was intended to be straightforward and easy to calculate. Banks typically treat small business lending differently from their commercial loans and often employ a separate department/division that focuses on small business lending. Their thresholds for the product vary to suit their business model and their product offerings. Therefore, rather than forcing banks to

[3] Schedule RC-C, Part II. Loans to Small Businesses and Small Farms, collected pursuant to Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

adopt a uniform definition, the CRA regulation employs a proxy that is modeled on the call report and treats loans of under $1 million as small business loans and loans under $500 million for small farms.

The questioned increase, adjusted to inflation would not necessarily incentivize banks to further engage in small business and small farm lending activities, as they are focused on serving the credit needs of their community regardless of loan amount. This metric is still a reasonable proxy for small business lending (financing the smallest of small businesses), notwithstanding the passage of time since it was adopted.

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

No. Community development loans and community development investments have distinct intent, structure, risks, and community development impact. Current examination procedures allow for discrete distinction for the number and dollar amount of community development and qualified investments. Combining these distinctly different instruments and performance standards may dilute the collective impact if banks choose to concentrate their efforts in loans versus investments for example. Our local communities need both community development loans and investments (and access to philanthropic and equity resources) to properly leverage capital to support complex community development projects in distressed and underserved communities.

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

Community development financing, if done correctly, is as unique as the local communities in which such financing is deployed. Framing metrics around community financing instruments and performance risks inflated or deflated performance measures without allowing financial institutions the option to put their performance into context. The current examination process adequately determines performance for community development loans and investments year-over-year and against peer institutions.

The examination method of assigning or labeling "innovative and flexible" is, however, subjective. The Board should delineate what instruments are considered innovative and responsive in advance so banks can then manage to this certainty in creating their approach to their CRA programs.

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

Any volunteer service that has a primary community development purpose that is generally determined by assessing whether a majority of those served by the activity are LMI individuals or communities, small businesses or small farms, and/or certain distressed or underserved rural geographies, or based on the express, bona fide intent of the activity should be considered a community development service under the CRA.

A volunteer hour is valuable to community development entities regardless if it uses the employee's technical or financial expertise. Activities such as volunteering at a homeless shelter or serving food at a soup kitchen should be eligible under the CRA performance standards as our local communities need volunteers now more than ever as local economies struggle to rebuild and strive to serve the most vulnerable individuals and communities.

Question 58. How could the Board establish clearer standards for economic development activities to ''demonstrate LMI job creation, retention, or improvement''?

The benchmark(s) should be clearly delineated and prescribed to reduce uncertainty. The Board should provide examples and resources beyond the Bureau of Labor Statistics to document LMI job creation, retention or improvement as this has been a subjective experience during CRA examinations.

Question 59. Should the Board consider workforce development that meets the definition of ''promoting economic development'' without a direct connection to the ''size'' test?

Yes. Workforce development targeted for a up to a percentage of Area Median Income (AMI) should be allowed without a direct connection to the size test.

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

Yes, as long as the financial institution has exhausted CDFI investment opportunities within its assessment area or that the investment in the CDFI will serve a unique or underserved/underbanked community.

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

Creating lists, including which activities shall be deemed to qualify for CRA credit, will render more consistency and transparency to the CRA examination process. Creating the list should be accomplished as an interagency endeavor inviting financial institutions, CDFIs and community development entities the opportunity to submit examples for consideration by the Board, as well as posting such lists for a period of public comment.

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

Creating an optional, pre-approval process for seeking certainty for prospective community development activities would be a welcomed option. Too often, financial institutions are left guessing regarding complex community development activities, and short of a formal review process, a bank would only find out during an exam review – which could be three years or more after a community development activity has been deployed that a presumably qualifying activity is deemed ineligible.

Question 91-99. Data collection, maintenance and reporting burden and desired impact

Providing a Board prescribed template, or better yet, an interagency template, may improve the consistency of the data collection efforts and may support a more unified approach to CRA examination management.

Requiring additional data reporting of community development activities and the resulting burden associated with data collection and reporting may not be justified to gain consistency in evaluations and may not provide greater certainty for banks. This concept is worth exploring further but it seems that requiring the reporting of these high-volume non-lending activities (in community development services, for example) will increase a financial institution's burden substantially. If then the data is compiled to create benchmarks or performance targets, there are too many variabilities (bank asset size, bank strategy, the availability of nonprofit partners, CDFIs etc.), across all markets to set reasonable performance assumptions without performance context.

The current system is sufficient to accurately capture community development activities while still flexible enough to accommodate for performance context (market differences etc.).

Timeline, Impact and Interagency Collaboration

Thank you for the opportunity to submit feedback on the regulations that implement the Community Reinvestment Act. Bankers and community development stakeholders across the nation look forward to reviewing and commenting on the next iteration of the proposed rules. Interagency collaboration and coordination on a future joint proposal is also critical to reduce market confusion and inefficiencies in regulatory policy and oversight.

Should you have any questions, please contact the undersigned at info@cratoday.com.

Sincerely,

Linda Ezuka

Linda Lewis Ezuka
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